

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 7346 of 1998

with

SPECIAL CIVIL APPLICATION NO. 7302 OF 1998

For Approval and Signature:

Hon'ble MR.JUSTICE N.N.MATHUR

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?

KIRIT CHANDUBHAI

Versus

COMMISSIONER

Appearance:

S.C.A. No. 7346 of 1998

MR VM DHOTARE for Petitioners

MS SHRADDHA TRIVEDI for Respondent No. 1, 2

S.C.A. No. 7302 of 1998

MR. V.M. DHOTARE for petitioners

MR. K.I. PATEL for respondents

CORAM : MR.JUSTICE N.N.MATHUR

Date of decision: 19-24/12/98

ORAL JUDGEMENT

Rule.

2. Two Civil Applications have been filed for vacating interim relief granted by this court dated 15.10.1998. Since the points for the interim relief and the main Special Civil Applications are the same, on the request of the learned counsel for the parties these matters are taken up for final disposal.

3. Special Civil Application No. 7346 of 1998 has been filed by 7 workmen whereas Special Civil Application No. 7302 of 1998 has been filed by 23 workmen. The say of the petitioners in both these Special Civil Applications is that they are working as daily wagers under various zones and Garden Departments of the Ahmedabad Municipal Corporation and they are directly under the control of the Deputy Municipal Commissioner, Parks and Gardens Departments. The further say of the petitioners is that they have been working as daily rated employees since many years continuously except for certain period for which artificial break has been created by the respondent Corporation by discontinuing their services. It is also submitted that the practice evolved by the Corporation is to grant sanction to appoint daily rated employees for a period of three months. A further practice of the Corporation is to appoint persons as daily rated employees who have completed more than 240 days with a further rider that such persons have experience or knowledge about the gradening etc. It is also submitted that the practice of the Corporation is to discontinue such persons and appoint fresh persons for a period of three months without following due procedure of law. The grievance of the petitioners is that they have been working as daily rated employees for number of years and in spite of that their services have not been regularised. It is thus prayed that a direction may be given to the respondents to regularise the services of the petitioners.

4. A reply has been filed by Mr. P.A. Dixit, Dy. Municipal Commissioner (West Zone) denying the allegations. It is stated that the petitioners were engaged for three months as per the Resolution of the Corporation for seasonal work. It is pointed out that they have been engaged for removal of fallen trees during rainy season. Thus, the appointment is for a specified term i.e. from 10.6.1998 to 9.9.1998. It is also pointed out that their services have been further extended upto 30.9.1998. A categorical statement has been made that none of them have completed 240 days. A categorical statement has been made that as they have not

worked for more than three months and they being casual wagers and having not completed more than 240 days in a year or they having not completed 900 days, they are not entitled to be regularised. The allegation with respect to giving of artificial break etc. has been denied. A rejoinder has been filed by Shri Ghisasingh Nenusingh, respondent No. 3 stating therein that as indicated in the Chart Annexure-A appended to the petition, the petitioners have been working as daily rated employees since 1996. It is also pointed out that some of the employees have been working since 1994. Copies of the muster rolls have been filed and it is stated that the statement of the Corporation that they were engaged only for a period of three months is not correct.

5. It is contended by Mr. Dhotare, learned counsel for the petitioners that since the petitioners are working for number of years as is evident from the muster rolls they are entitled to be regularised. The learned counsel has placed reliance on various decisions of the apex court reported in 1992(4) SCC 112, AIR 1990 SC 2228, 1986(1) SCC 637. The learned counsel has placed reliance on a judgement of this court reported in 1985 GLH (UJ) 51 wherein the practice of giving artificial break has been criticised.

6. On the other hand Ms. Shraddha Trivedi and Mr. K.I. Patel submitted that the daily wagers are not entitled for regularisation. It is also submitted that the petitioners were appointed for a limited period i.e. from 10.6.1998 to 9.9.1999 as daily rated workers on temporary basis for seasonal work. It is also submitted that daily wagers are not entitled for regularisation. The learned counsel have placed reliance on various decisions of the apex court and of this court.

7. I have considered the rival contentions. At the first instance in order to show that the petitioners have been working for number of years an effort has been made to take me through the muster rolls. It is not possible for me in a petition under Article 226 of the Constitution of India to check up the muster roll of 7 petitioners in one Special Civil Application and 23 petitioners in another Special Civil Application. It is a disputed question of fact which can be better appreciated by way of remedy under the Industrial Disputes Act. Be that as it may, I would also deal with the cases referred by the learned counsel for the parties.

8. In NIADAR AND ANOTHER VS. DELHI ADMINISTRATION

AND ANOTHER reported in (1992) 4 SCC 112 the apex court directed for regularisation of where the casual labourers were working in the department for nearly 20 years as casual labourers. This case has no application to the facts of the present case as in the instant case as the appointment is for a specified period.

9. In JACOB M. PUTHUPARAMBIL VS. KERALA WATER AUTHORITY reported in AIR 1990 SC 2228 the court directed regularisation where the stop-gap arrangement continued in service for years together. Apparently this case has no application to the facts of the present case.

10. In STATE OF HARYANA AND OTHERS ETC. VS. PIARA SINGH AND OTHERS ETC. reported in JT 1992(5) S.C. 179 the apex court laid down guidelines for regularisation of ad hoc/temporary in government service. The court held that normal rule is regular recruitment through the prescribed agency but exigencies of administration may sometimes call for an adhoc or temporary appointment to be made. In such situation, efforts should always be to replace such an adhoc/temporary employee by a regularly selected employee as early as possible. The court also held that an adhoc / temporary employee should not be replaced by another ad hoc/ temporary employee. In the third category the court said that where an adhoc or temporary employment is necessitated on account of the exigencies of administration, he should ordinarily be drawn from the employment exchange unless for reasons it is not possible in which case pressing cause must be stated on the file. In another category the court provided that if for any reason, an adhoc or temporary employee is continued for a fairly long spell, the authorities must consider his case for regularisation provided he is eligible and qualified according to rules and his service record is satisfactory and his appointment does not run counter to the reservation policy of the State. So far as the work-charged employees and casual labour are concerned, the court said that an effort must be to regularise them as far as possible and as early as possible subject to their fulfilling the qualifications if any prescribed for the post and subject also to availability of work. The court further said that if a casual labourer is continued for a fairly long spell - say two or three years, a presumption may arise that there is regular need for his services. In such a situation, it becomes obligatory for the concerned authority to examine the feasibility of his regularisation. The court also observed as follows:-

"These are but few observations which we thought

it necessary to make, impelled by the facts of this case, and the spate of litigation by such employees. They are not exhaustive nor can they be understood as immutable. Each Government or authority has to devise its own criteria or principles for regularisation having regard to all the relevant circumstances, but while doing so, it should bear in mind the observations made therein."

11. This case has no application to the facts of the present case as the categorical case of the respondent is that there is no regular work available for the petitioners as they were engaged for a specified period to remove trees which had fallen because of the rain and the work is purely of temporary nature.

12. In DHIRENDRA CHAMOLI AND ANOTHER VS. STATE OF U.P. reported in (1986) 1 SCC 637 the court deprecated the practice of employing the casual workers in organisations which are in existence for long (12 years) on the ground of organisations being temporary and sanction of posts recommended for regularisation of such work. The court further said that in absence of sanctioned posts the casual workers cannot be regularised. Apparently this case is also of no assistance to the petitioners. The learned counsel for the petitioners also referred to unreported judgement of this court in the case of GHANSHYAM M. PANDYA VS. STATE OF GUJARAT AND OTHERS in 1985 G.L.H. (UJ) 51 in support of the contention that an artificial break in service cannot be given by the employer with a view to deprive the benefit of long period of service. In the said case the appointment was given for 29 days. Such a system continued for a period of more than four years. In this fact the court deprecated the practice of giving artificial break. In the instant case also there is no question of artificial break as the petitioners were engaged as casual labours for a specified period. The petitioners are not otherwise entitled to any relief as the apex court has now held in the case of STATE OF U.P. AND OTHERS VS. AJAY KUMAR reported in (1997) 4 SCC 88 that the daily wagers are not entitled to regularisation. The court also found that in absence of any statutory rule, no direction can be given for regularisation. The court observed thus:-

"It is now settled legal position that there should exist a post and either administrative instructions or statutory rules must be in operation to appoint a person to the post. Daily wage appointment will obviously be in relation to

contingent establishment in which there cannot exist any post and it continues so long as the work exists."

13. In MADHYA PRADESH HASTA SHILPA VIKAS NIGAM LIMITED VS. DEVENDRA KUMAR JAIN reported in JT 1995(1) S.C. 198 the court held that a temporary government servant does not become permanent unless it acquires that capacity by force of any rule or declared as permanent servant.

14. In DHIRENDRA CHAMOLI AND ANOTHER VS. STATE OF U.P. reported in (1986) 1 SCC 637 the court held that in absence of sanctioned post the casual workers cannot be regularised.

15. In the case of ARJUNBHAI J. CHAUHAN VS. STATE OF GUJARAT reported in 38(3) GLH 2461 this court relying on the SECRETARY, MINISTRY OF WORKS AND HOUSING, GOVT. OF INDIA VS. MOHINDER S. JAGDEV reported in JT 1996(8) SC 46 held that merely by continuing irregular appointment for years, the holder of the post does not acquire any right to hold the post.

16. In UMESHKUMAR MANUBHAI AMIN VS. DHOLKA NAGARPALIKA reported in 1998(2) GLR 1020 this court relying on the decisions in ALLAHABAD BANK VS. PREM SINGH reported in JT 1996(7) SC 678 and CHANDIGARH ADMINISTRATION VS. JAGJIT SINGH reported in AIR 1995 SC 705 held that daily wager has no right to hold the post and cannot be granted relief of regularisation. It is also held that daily wage appointment automatically ceases at the end of each day. As the daily wagers have no right to the post, they are not entitled also for the regularisation of their services.

In view of the aforesaid, the petitioners being daily wagers appointed for a specified period, have no case for regularisation. Consequently, both the Special Civil Applications being devoid of force are rejected. Rule discharged in each case.

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